

# **Exhibit A**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

BIOGEN, INC., ET AL	)	CA 03-11329
	)	Boston, MA
v.	)	June 22, 2004
	)	
COLUMBIA UNIVERSITY, ET AL	)	

BEFORE THE HONORABLE MARK L. WOLF  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

(As previously noted.)

JUDITH A. TWOMEY, RPR  
Official Court Reporter  
One Courthouse Way  
Courtroom 10~Room 5200  
Boston, MA 02210  
(617) 946-2577

1 MR. GINDLER: That's correct.

2 THE COURT: Have you completely and finally  
3 identified all of the claims that you want reissued?

4 MR. GINDLER: Well, the answer is yes, based  
5 upon the state of proceedings. What happens next is  
6 patent prosecution. The Patent Office will then write  
7 back and say, claims allowed or not allowed. And if not  
8 allowed, here's why. And then we have a chance to meet  
9 that office action by possibly changing the language of  
10 the claims or any new claims.

11 THE COURT: So how long is this process of  
12 reissuance and reexamination going to take?

13 MR. GINDLER: It will probably take between one  
14 and two years. I think that's a fair assessment. I'm  
15 not sure people disagree very much about that, but that's  
16 just how long it's going to take the Patent Office to do  
17 it. The Patent Office will expedite. It's part of the  
18 rules. The Patent Office will speed things up if we have  
19 stayed litigation, because they know there's a lot of  
20 people in the green room waiting to see what's going to  
21 happen. But why should we have a case for construing  
22 claims that might be wiped out by the Patent Office or we  
23 may get new claims or the claims may be amended and  
24 narrowed. We don't know what we're fighting about. And  
25 that's the difference. The Patent Office is a

1 fundamentally different forum. What they're doing is  
2 reconsidering the '275 patent all over again. They're  
3 saying, let's start from scratch. Do you get any of  
4 these claims? Do you get some of them, but only  
5 modified? Or can you get new claims which better  
6 describe the subject matter of the invention? That's why  
7 the Patent Office is different. We can have a hearing  
8 here on summary judgment. The plaintiffs can win and  
9 validate all the claims. But why? Because which claims  
10 will emerge? Which claims will be narrowed? Which  
11 claims will be added? It is a tremendous waste of  
12 resources, both of the parties and of the court to do  
13 that. We didn't bring this on, you're right. Something  
14 called Public Patent Foundation brought this on. It was  
15 a surprise to us. But they did it. And now the question  
16 is what's the most efficient thing to do?

17 THE COURT: Well, they did part of it. They  
18 asked for the reexamination. They didn't ask for the  
19 reissuance.

20 MR. GINDLER: That's correct. But it's very  
21 common to ask for reissue, and that's why there's a  
22 procedure to merge the two proceedings when someone asks  
23 for a reexamination. But it both happened together on  
24 the same track by the same examiner so nothing gets  
25 slowed down. That's what we want to happen. We want

1       this done quickly in the Patent Office too. We want to  
2       know what rights we do and do not have. But we don't  
3       know the answer to that question right now, and that's  
4       fundamentally why this case can't go for. This case is a  
5       fight about the '275 patent. How can you fight about  
6       that patent if we don't know what it claims?

7               THE COURT: We know what it claims.

8               MR. GINDLER: We know what it claims today --

9               THE COURT: It might change.

10              MR. GINDLER: -- but we don't know what's going  
11      to happen, and that's the fundamental issue.

12              THE COURT: Isn't it time to know what the --  
13      isn't it time to know what they patents -- the first  
14      application was filed in 1980, right?

15              MR. GINDLER: That's correct.

16              THE COURT: And if we had the current law, the  
17      longest any of these patents could have run would be  
18      2000.

19              MR. GINDLER: Also correct.

20              THE COURT: So now --

21              MR. GINDLER: And the Patent Office --

22              THE COURT: I mean, you're grandfathered in by  
23      one day. You know, we have an expression in public  
24      policy by Congress and the President that, you know, you  
25      get 20 years to do this, and anything more than that is

1 abusive. And they tell me -- you know, you're standing  
2 here and predicting one to two years, but you're not  
3 prosecuting this in the Patent Office. That's Mr. White.

4 MR. GINDLER: That's correct.

5 THE COURT: And Mr. White is in there and, in  
6 effect, confessing error. He's saying, I've been  
7 prosecuting this for 24 years and here it is, June 2004.  
8 I realize I didn't claim enough. I mean, if he did such  
9 a lousy job, why didn't Columbia fire him and get  
10 somebody who can articulate the claims as they should  
11 have been articulated 24 years ago?

12 MR. GINDLER: I don't think he did a lousy job.  
13 When a patent is issued, it's not uncommon for the patent  
14 court, look at the patent and say, I wish I had done a  
15 better job in that claim. And people often leave it  
16 alone, and they leave it alone because if you go back to  
17 the Patent Office and you seek reissue, it's a whole new  
18 ball game. You put the entire patent at risk. Well,  
19 since that's already happened, since reexamination was  
20 filed, it makes sense for us to go back and try and  
21 figure out what the proper scope of the claims is.

22 THE COURT: I want to hear Biogen and Genzyme's  
23 response, but I have to decide this based on the record.  
24 You know, with what's in the record, you're making a  
25 great argument, but, you know, I'm looking at this, and